

**NEW YORK STATE  
OFFICE OF PARKS, RECREATION &  
HISTORIC PRESERVATION**

**AND**

**HUDSON HIGHLANDS FJORD TRAIL, INC.**

**COOPERATIVE AGREEMENT**

**Contract Number: C003145**

**Hudson Highlands Fjord Trail**

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## COOPERATIVE AGREEMENT

### HUDSON HIGHLANDS FJORD TRAIL

This agreement is dated April 1, 2021, and is between the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”), and Hudson Highlands Fjord Trail, Inc. (“HHFT”) a New York not-for-profit corporation.

#### RECITALS:

HHFT envisions a public multi-use accessible recreational trail along the east bank of the Hudson River from Cold Spring to Beacon (with its associated improvements, “**Fjord Trail Project**”), including through Hudson Highlands State Park Preserve (the “**Park**”) and across lands currently owned by third-parties.

The planning, design and permitting of the Fjord Trail Project has been funded largely by private philanthropy, and the construction of the Fjord Trail Project is anticipated to be funded by a combination of private philanthropy and funding provided to or by relevant municipalities and other agencies of the State of New York.

Section 3.09(4) of the Parks, Recreation and Historic Preservation Law authorizes OPRHP to cooperate in the planning, organization, development and operation of private park and recreational projects, and Section 3.09(6) of the Parks, Recreation and Historic Preservation Law authorizes OPRHP to encourage, promote, and engage in cooperative recreational projects undertaken by private philanthropic or non-profit interests for the benefit of the public.

OPRHP and HHFT wish to cooperate on the planning and development of the Fjord Trail Project.

Development of the Fjord Trail Project will occur in phases. This agreement contains terms and conditions applicable to all phases. A supplemental agreement with respect to each phase, containing additional terms and conditions applicable to such phase, will be entered into prior to commencement of construction on such phase.

OPRHP and HHFT anticipate that upon substantial completion and public opening of the final phase, this agreement, as then amended and supplemented by all such supplemental agreements, will be replaced in its entirety by an operations and maintenance agreement (“**O & M Agreement**”), which shall thereafter govern the operation of the Fjord Trail Project.

**Now, therefore**, the parties agree as follows:

## ARTICLE ONE

### Section 1. Contract Documents

- (a) This agreement is comprised of the following documents:
  - (i) Cooperative Agreement
  - (ii) Attachment A – Fjord Trail Project Overview
  - (iii) Attachment B – Real Property Overview
  - (iv) Attachment C – Requirements for Capital Construction Projects
  - (v) Attachment D – Insurance Requirements
  - (vi) Attachment E – Form of Supplemental Agreement
  - (vii) Appendix A – Standard Clauses for New York State Contracts
- (b) In the event of any inconsistency in or conflict among the document elements of this agreement, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Standard Clauses for NYS Contracts, (2) Cooperative Agreement and its attachments, as amended or supplemented as described in Section 3 from time to time.
- (c) All references to this agreement are to this cooperative agreement as amended or supplemented from time to time.

### Section 2. Term

- (a) The initial term of this agreement begins on the date first written above (the “**Commencement Date**”) and, unless renewed as hereinafter provided, terminates on the earlier of (a) the date the O & M Agreement enters into effect or (b) the 20<sup>th</sup> anniversary of the Commencement Date (such date or the end date of any renewal term under subsection (b) below, the “**Expiration Date**”).
- (b) On the date that the initial or any subsequent term would otherwise terminate (other than termination upon the O & M Agreement entering into effect), the term of this agreement shall be extended for an additional twenty (20) years unless OPRHP or HHFT notifies the other not less than six (6) months prior to such Expiration Date that it elects that such renewal shall not occur, and this agreement shall terminate, on such Expiration Date.

### Section 3. Fjord Trail Project Description and Phasing

- (a) The Fjord Trail Project is expected, as of the date hereof, to encompass the improvements and operations described in Attachment A - Fjord Trail Project Overview. HHFT will not be obligated to construct, and OPRHP will not be deemed to have approved or permitted, any part of the Fjord Trail Project as described in Attachment A unless the parties enter into a Supplemental Agreement with respect thereto (and the other conditions therein have been satisfied).
- (b) Attachment A contains HHFT’s current expectations regarding the scope and definition of each phase of development (which phases may encompass non-contiguous land and which may overlap in time) (“**Phase**”). The definition, scope, sequence and timing of each such Phase may change.
- (c) Before commencing construction on any Phase, OPRHP and HHFT must have entered into an agreement supplemental to this agreement that specifically identifies and defines such Phase,

constitutes the capital projects approval for such construction, and sets forth any and all terms and conditions, in addition to the terms and conditions set forth herein, that shall govern the development and initial operation of such Phase (including, without limitation, any additional operating conditions applicable to such phase required by OPRHP and provisions designed to satisfy the requirements of government units or public agencies who own real property interests relevant to such Phase) (a “**Supplemental Agreement**”). Each such Supplemental Agreement shall be substantially in the form of Attachment E, with such changes and additions as agreed upon by the parties.

#### **Section 4. Cooperation; Public Outreach**

- (a) The parties shall keep each other fully informed of their respective activities, plans, and proposals regarding the Fjord Trail Project and related operations. The parties shall meet at least twice each calendar year to discuss the Fjord Trail Project.
- (b) HHFT has held and shall hold additional public meetings seeking input and addressing questions with respect to the Fjord Trail Project design and construction. This obligation is not intended to replace or fulfill any public notice or meeting required by law or regulation.
- (c) All public announcements regarding the Fjord Trail Project or this agreement, including without limitation press releases, press statements or comments, informational brochures, advertisements, and online content, must be shared, reviewed, and approved by both parties prior to distribution or public release. However, each party may make any statement it believes is required by law or to ensure public health and safety without consultation with such review and approval.

### **ARTICLE TWO**

#### **Section 1. Nature of Real Property Interests**

The Fjord Trail Project is expected to consist of three distinct types of real property interests: (a) property owned in fee by the People of the State of New York and under the jurisdiction of OPRHP (including access rights and other property interests comprising current OPRHP parks and preserves) (“**OPRHP Lands**”), (b) property owned in fee by HHFT, or where a third party has extended rights in real property *directly* to HHFT by lease, easement, or other mechanism (“**HHFT Lands**”), and (c) property owned in fee by governmental and quasi-governmental entities other than OPRHP, including property owned in fee by the People of the State of New York that is under the jurisdiction of an agency other than OPRHP, where, in order to facilitate development or operation of the Fjord Trail Project as currently conceived, such entities must extend certain rights to either of OPRHP or HHFT (“**Other Interests**”).

#### **Section 2. OPRHP Lands**

- (a) OPRHP states that, at the time of signing, it holds fee title to or another real property interest in the OPRHP Lands, as the same are identified in Attachment B.
- (b) *Licensed OPRHP Lands.* In this agreement “**Licensed OPRHP Lands**” means those OPRHP Lands and any Other Interests then held by OPRHP that are licensed or otherwise extended to HHFT under any Supplemental Agreement for the uses and obligations set forth in this agreement, which lands will be subject to any restrictions contained in this agreement, running with the land, and in any Supplemental Agreement under which such lands are particularly licensed. HHFT acknowledges that

the OPRHP Lands are public, non-residential spaces (some within a State park preserve, and some may be subject to management agreements with others) and that OPRHP will grant only a right to use the Licensed OPRHP Lands “as is/where is” and without warranty. HHFT agrees to take the Licensed OPRHP Lands “as is” in the condition they are in when they are turned over to HHFT by OPRHP.

- (c) *Rights of entry.* In addition to any other rights of entry in this agreement, OPRHP may, upon 24 hours’ notice, enter the Licensed OPRHP Lands for the purposes of observing the performance by HHFT of its obligations under this agreement or for the doing of any official act or things which OPRHP may be obligated or have the right to do under this agreement or in accordance with law. In case of emergency or exigent circumstances threatening the health, safety, or welfare of the public or the physical integrity of the OPRHP Lands, OPRHP reserves an unrestricted right of entry to the Licensed OPRHP Lands at all times.
- (d) *Rights reserved.* OPRHP reserves for its sole benefit all other rights to the Licensed OPRHP Lands including without limitation the right to authorize the installation of wireless telecommunications antenna and other related or utility systems on the Licensed OPRHP Lands. OPRHP agrees to consult with HHFT with respect to any such installation proposed on Licensed OPRHP Lands.

### **Section 3. Real Property Interests Held Directly by HHFT**

- (a) HHFT states that, at the time of signing, it holds fee title to or another real property interest in the HHFT Lands, as the same are identified in Attachment B.
- (b) *Grant of license.* Each Supplemental Agreement with respect to a Phase shall designate HHFT Lands (or interests therein or portions thereof) deemed to be “**Licensed HHFT Lands**” for purposes of such Phase. HHFT hereby grants to OPRHP a non-exclusive license to enter onto the Licensed HHFT Lands so designated for the sole purpose of carrying out any privilege granted to or obligation imposed on OPRHP under this agreement, subject to any restrictions contained in both this agreement and the documents whereby HHFT obtained its interest in such lands.
- (c) *Rights reserved.* HHFT reserves for its sole benefit all other rights to the HHFT Lands, provided that HHFT agrees that installation of any new wireless communications antenna or related or utility system on HHFT Lands shall require the approval of OPRHP.

### **Section 4. Other Interests**

- (a) As of the date hereof, it is contemplated that the Other Interests will include: (i) from the New York City Department of Environmental Protection, a trail easement, (ii) from the Metro-North Commuter Railroad Company, a subsidiary of the Metropolitan Transportation Authority, either a conveyance in fee and/or long-term lease or easement of the required lands and air rights, and (iii) from the New York State Department of Transportation, appropriate permissions for improvements and ongoing Fjord Trail Project operations.
- (b) The parties shall cooperate with each other to procure and secure such Other Interests, or interests in other forms providing the necessary right for development and operation of the Fjord Trail Project. HHFT shall pay any out-of-pocket costs associated with OPRHP’s acquisition of the Other Interests, including the cost of necessary surveys, appraisals, environmental studies and testing, purchase or rental price, and any other similar hard costs, provided that such costs are incurred with HHFT’s prior

approval. Whenever possible, HHFT will be the contracting party for necessary service contracts associated with OPRHP's acquisitions under this agreement. If it is not possible for HHFT to be the contracting party, OPRHP will be the contracting party and HHFT shall reimburse OPRHP following receipt of a customary detailed invoice.

- (c) Upon the acquisition of each such Other Interest, OPRHP shall extend to HHFT the access and other rights it has received from such other governmental agencies in a mutually agreeable form, with the understanding and mutual intention that (i) if a novation to HHFT of such interest is possible, then that will be the preferred form of transfer or assignment, so that HHFT benefits directly from the necessary rights and directly assumes the related obligations, and OPRHP is released from any liability or obligations thereunder, or (ii) if a novation is not possible, then the arrangement as between OPRHP and HHFT shall provide that so long as HHFT shall benefit from the rights provided by such other governmental agency, it shall perform the related obligations (e.g., the performance of covenants relating to safety, conduct, insurance, notices, etc.).
- (d) The Supplemental Agreement for any Phase in which Other Interests are involved shall (i) specifically identify each such Other Interest, (ii) state the manner in which the rights shall be extended to HHFT and HHFT shall be bound to perform the related obligations and (iii) if required, contain the operative undertakings by which HHFT agrees to perform such related obligations.

#### **Section 5. Title to Improvements**

- (a) Improvements to the Licensed OPRHP Lands completed pursuant to this agreement will become the property of OPRHP upon completion unless the Supplemental Agreement designating such Licensed OPRHP Lands expressly provides otherwise.
- (b) Improvements to the HHFT Lands completed pursuant to this agreement will become the property of HHFT upon completion unless the Supplemental Agreement designating such HHFT Lands expressly provides otherwise.

### **ARTICLE THREE**

#### **Section 1. Fjord Trail Master Plan**

- (a) HHFT shall continue to undertake the master planning exercise, including the GEIS/EIS process, for the Fjord Trail Project, and OPRHP shall continue to participate therein. HHFT acknowledges that OPRHP has adopted and may from time to time modify a master plan for the Park. The parties shall cooperate to ensure the consistency of the two master plans.
- (b) Although OPRHP is reviewing the draft Fjord Trail Master Plan and will review and approve such master plan when it becomes final, no review or approval of any Phase or other Capital Project is made by the virtue of the review or approval of such master plan.

#### **Section 2. Required OPRHP Approvals**

- (a) HHFT shall not erect any structures; make any modifications, alterations, additions, improvements, repairs, or replacements; or do any construction work on, to, or affecting the Licensed OPRHP Lands, or install any non-removeable fixtures in or on the Licensed OPRHP Lands (a "**Capital Project**"),



except as contemplated in an Approval Request and approved by a Supplemental Agreement or other form of Capital Project Approval.

- (b) Before commencing any Phase or other Capital Project, HHFT shall submit a discrete set of detailed design and construction drawings and description of contemplated operations together with evidence reasonably satisfactory to the Commissioner that it has financing or financial commitments sufficient to cover the full cost thereof (“**Approval Request**”) to OPRHP for review and approval, such approval to take the form of (i) in the case of one of the development Phases, a Supplemental Agreement, and (ii) in the case of any other Capital Project not covered by a Supplemental Agreement, a letter or other writing issued by OPRHP’s Regional Director and Capital District Manager (in either case, a “**Capital Project Approval**”).
- (c) HHFT acknowledges that OPRHP may only execute a Supplemental Agreement approving a Phase or issue a Capital Project Approval after the completion and submission of required documents and applicable reviews under SEQRA and the State Historic Preservation Act, and that OPRHP may condition such Supplemental Agreement or Capital Project Approval on project-specific restrictions responsive to such reviews.

### **Section 3. Requirements for Capital Improvements on OPRHP Lands**

- (a) HHFT shall undertake construction of each Phase of the Fjord Trail Project, and any and all other Capital Projects, in accordance with the provisions of Attachment C, the requirements set forth in this Article Four, and the conditions of the applicable Capital Project Approval.
- (b) HHFT shall remove or modify any Capital Project undertaken without a Supplemental Agreement or other Capital Project Approval if OPRHP so directs. Except for customary capital maintenance, HHFT shall not remove or modify any Capital Project during the term of this agreement or at its expiration or termination without the prior written consent of OPRHP.
- (c) HHFT shall ensure that all worksites are secured against unauthorized access during periods of construction. For the avoidance of doubt this responsibility includes the right of HHFT to close worksites to public access without further permission from OPRHP. HHFT may not however close unaffected portions of the Licensed OPRHP Lands to public access without notice to and permission from OPRHP, except in response to a public health and safety emergency.

### **Section 4. Required Permits and Other Approvals**

- (a) HHFT shall, at its own cost, identify and acquire all required permits or other approvals for all Phases and other Capital Projects, including approvals required by the terms of OPRHP’s or HHFT’s acquisition of any Other Interest. OPRHP shall provide HHFT with any letters of support or landowner acknowledgements required to obtain such approvals, and otherwise provide appropriate assistance to HHFT in securing such approvals.
- (b) HHFT acknowledges that OPRHP is the permitting agency for the portions of the Fjord Trail Project on lands under the OPRHP Lands with respect to the New York State Uniform Fire Prevention and Building Code (the “**Building Code**”) and that OPRHP has final approval with respect to compliance with the Building Code.

- (c) HHFT shall promptly notify OPRHP of the revocation of, withdrawal of, or third-party challenge to any permit of approval required for construction.

### **Section 5. Defense of Permits and Approvals**

In the event of litigation or other contest or third-party challenge, prior to or following any action under SEQRA, or the issuance of any other permit or approval in connection with the Fjord Trail Project, HHFT shall lead the effort to respond to such litigation, contest or challenge (at its own expense), including assuming the defense of any litigation, provided that (i) OPRHP shall provide (at its own expense) appropriate assistance requested by HHFT and (ii) HHFT shall keep OPRHP informed of the status of any such litigation or other contest.

### **Section 6. Environmental Reviews and Assessments**

- (a) This agreement is part of the preliminary planning required to advance the Fjord Trail Project; does not by its own terms commit OPRHP to commence, engage in, or approve the Fjord Trail Project or any Phase thereof; and is a Type II action under the State Environmental Quality Review Act (SEQRA).
- (b) OPRHP is and will be the lead agency with respect to ongoing and future reviews of segments of the Fjord Trail Project under SEQRA and will participate in any National Environmental Policy Act (“NEPA”) review, if necessary.
- (c) HHFT shall, at its own cost, identify and complete documentation for, coordinate with OPRHP on, and participate in all required environmental reviews, surveys, and assessments, including any NEPA review, if necessary.

## **ARTICLE FOUR**

### **Section 1. Construction Contracting**

- (a) Except as the parties might otherwise agree, HHFT will be the contracting entity for the Fjord Trail Project and shall administer and manage the Fjord Trail Project’s Capital Project contracts, including construction, engineering, design, administration, and otherwise, and shall designate an individual for that purpose (the “**HHFT Construction Manager**”). OPRHP may designate an individual to observe Capital Project progress and manage OPRHP’s participation in HHFT Capital Projects (the “**OPRHP Construction Coordinator**”).
- (b) HHFT shall ensure compliance with all environmental reviews, permitting, and other approvals, including the relevant Capital Project Approval, before letting any construction contract.
- (c) HHFT shall not use any contractor that is listed either on the Office of General Services’ list of non-responsible entities or in the Office of General Services’ database of debarred entities.
- (d) All such HHFT contracts for a Capital Project must be consistent with the terms of this agreement and must not impair the rights of the State or of OPRHP under this agreement or create or be deemed to create a contractual or third-party beneficiary relationship between OPRHP and any contractor of HHFT.

- (e) HHFT shall inform the OPRHP Construction Coordinator of any material disputes with contractors.
- (f) Subsection (a) of this section notwithstanding, HHFT will not be the contracting entity for any Fjord Trail Project work on lands owned by the People of the State of New York agreed to be conducted directly by an appropriate New York State agency in such agency's sole discretion.

**Section 2. Construction Progress and Completion**

- (a) The HHFT Construction Manager shall regularly consult with the OPRHP Construction Coordinator and invite the OPRHP Construction Coordinator to participate in meetings with HHFT's contractors as appropriate. However, HHFT's Construction Manager will be the primary contact with all HHFT's contractors and the OPRHP Construction Coordinator shall not direct the work or any HHFT contractor or communicate with HHFT's contractors without including HHFT's Construction Manager.
- (b) HHFT shall provide the OPRHP Construction Coordinator with a semi-annual report on the progress of each Phase of the Fjord Trail Project, such report to include updates on construction progress, budget, spending, and estimated completion dates for such Phase.
- (c) A Phase will be deemed complete upon the delivery of certificates of acceptance by HHFT to its primary contractors for all component projects and the issuance of all code compliance certificates necessary for public use.
  - (i) Prior to accepting work under any construction contract for work on Licensed OPRHP Lands with a value in excess of US\$1,000,000, HHFT shall give OPRHP notice and opportunity to inspect the work and shall not accept the work until any reasonable OPRHP concerns have been resolved.

**Section 3. Contractor Insurance Requirements**

- (a) In addition to the insurance coverage requirements in Attachment C, HHFT shall require all its consultants and contractors doing work on the Licensed OPRHP Lands to meet the same insurance requirements applicable to HHFT under Article Six, Section 1.
  - (i) Prior to any such contractor beginning work on the Licensed OPRHP Lands, HHFT shall provide OPRHP with the evidence required by subsection (b) of such section that such contractor holds the insurance required by subsection (a) of that section.
- (b) As required more generally by Section 4(c) of Article Two, HHFT shall further require all its consultants and contractors doing work on land subject to the Other Interests to comply with the insurance requirements, including requirements for proof of such insurance, of the owners of such land that are set forth in the documents providing OPRHP and/or HHFT its access or other rights to such land comprising the Other Interests.
- (c) HHFT shall require all its consultants and contractors to indemnify the Indemnitees as set forth in Article Six, Section 2.

## ARTICLE FIVE

### Section 1. Requirement to Operate

Following completion of each Phase, HHFT shall operate the constructed portion of the Fjord Trail Project as a multi-use recreational trail open to the general public in accordance with the provisions of this article.

### Section 2. Operating Conditions

- (a) *Fjord Trail Rules; Applicability of OPRHP Regulations.* OPRHP's regulations, policies and the Park's guidelines will apply at all sections of the Fjord Trail Project on the Licensed OPRHP Lands. HHFT shall adopt rules for the remaining portions of the Fjord Trail Project that are consistent with OPRHP's regulations and policies and with the Park's guidelines.
- (b) *Utilities.* HHFT shall establish all necessary accounts with utility providers at its own expense. OPRHP is not required to install any water supply, sewer, or drain pipes or fixtures or electric, fuel oil, or gas lines or fixtures at the Licensed OPRHP Lands beyond those already in place on the date of this agreement. If the installation, upgrade, or maintenance of any utility infrastructure within the Licensed OPRHP Lands is necessary, HHFT shall undertake such work at its own cost. Such work constitutes a Capital Project and it must be completed in accordance with the approval procedures and requirements applicable to Capital Projects.
- (c) *Trash and Debris.* HHFT shall provide for trash removal service at the Fjord Trail Project at its own cost. HHFT shall collect all trash and debris in sanitary and adequate closed containers reasonably protected from public view until transferred to dumpsters.
- (d) *Closures.* Although OPRHP shall make commercially reasonable efforts to avoid interference with HHFT's use of the Licensed OPRHP Lands, OPRHP may, with two weeks' notice to HHFT, require HHFT to temporarily close in order for OPRHP to make repairs, alterations, changes, or improvements to the Licensed OPRHP Lands or the Park. HHFT acknowledges that OPRHP might close the Park, or a portion of the Park encompassing the Licensed OPRHP Lands, with little or no advance notice for the protection of public health and safety, and that in such event HHFT shall close the Fjord Trail (or portion located on the Licensed OPRHP lands so closed) until the Park or affected portion of the Park are re-opened and OPRHP will have no liability to HHFT for such closures.
- (e) *Emergency Response and Incident Notifications.* The parties shall develop, and periodically update as necessary, a comprehensive emergency first response plan identifying the roles and responsibilities of each of OPRHP and HHFT in case of emergencies requiring a response at the Fjord Trail Project. Such plan must include notification procedures that are consistent with OPRHP's emergency management procedures, which are set forth in OPRHP's Emergency Management Operations Protocol and Emergency Notification Protocol for Significant Incidents and any updates thereto, which OPRHP shall provide to HHFT.
- (f) *Housekeeping and Sanitation.* HHFT shall at all times keep the Fjord Trail Project in a clean and sanitary condition.
  - (i) HHFT shall keep all interior spaces within the Fjord Trail Project reasonably free from ants, flies, roaches, rodents, and all other insects and vermin its own cost and expense. HHFT shall keep

use of rodenticide and other chemical pesticides to a minimum, consistent with OPRHP's Pesticide Reduction Policy.

- (ii) HHFT shall adhere to all applicable State and local health and sanitary codes, standards, and regulations, including sanitary standards established and issued by OPRHP, at all times. If, during an inspection or at any other time, OPRHP determines a violation of such codes, standards, or regulations exists, it will inform HHFT in writing. Immediately upon receipt by HHFT's on-site management of any notice, inspection report, and/or citation issued by any State or county health agency, HHFT shall forward a copy of the same to OPRHP's Regional Headquarters and Counsel's Office. If HHFT fails to correct any health or sanitation deficiency within two days of notice, either by OPRHP or any State or County health agency, OPRHP may correct the deficiency and HHFT shall pay the actual cost thereof, including any expense for labor and materials.
- (g) *Fire Safety Standards.* HHFT shall comply with all current and future regulations and requirements and standards and best practices of the National Fire Protection Association and the New York Fire Insurance Rating Organization, and of any other board or organization exercising similar functions, that apply to the Fjord Trail Project.
- (h) *Operation of Motor Vehicles and Heavy Equipment.* HHFT shall not allow the operation of a motor vehicle by anyone under the minimum age required by law or who does not hold a valid license for such operation. HHFT shall not permit the operation of heavy equipment, including trailers, by anyone other than a motor vehicle operator who is properly trained in the safe use and handling and the limitations of the equipment. HHFT shall not operate motor vehicles on any public use pedestrian/bicycle paths without written approval from OPRHP.

### **Section 3. Operating Responsibilities**

- (a) HHFT shall comply with all federal and state laws, codes, regulations, and policy or guidance documents applicable to the conduct of the activities authorized by this agreement, including all applicable governmental regulations regarding the sale, use, and storage of foodstuffs, beverages, alcohol, and fuel.
- (b) HHFT shall, to the same extent required of OPRHP's own operations, comply with all State of New York and OPRHP policies implemented to address the environmental impacts of its operations, including, without limitation, those on the use of non-biodegradable material, the purchase of "green" products, and the conservation of energy.
- (c) HHFT shall not commit any nuisance on the Licensed OPRHP Lands or do or allow to be done anything which may result in the creation or commission of a nuisance on the Licensed OPRHP Lands. HHFT shall not cause or produce, nor allow to be caused or produced, any unusual, noxious, or objectionable smoke, gas, vapor, odor, or noise on the Licensed OPRHP Lands, nor allow the same to permeate the Licensed OPRHP Lands or emanate therefrom.
- (d) HHFT shall not use or connect any equipment or engage in any activity or operation that will cause or tend to cause an overloading of the capacity of any existing or future utility, mechanical, electrical, communication, or other system or portion thereof serving the Licensed OPRHP Lands; nor shall HHFT do or allow to be done anything that might interfere with the effectiveness or accessibility of

existing and future utility, mechanical, electrical, communication, or other systems or portions thereof on the Licensed OPRHP Lands or elsewhere at the Park. HHFT shall connect all electrical appliances directly to an electrical outlet or fused power strip.

- (e) HHFT shall not overload any floor, roadway, passageway, pavement or other surface, or any wall, partition, column, or other supporting member, or any elevator or other conveyance within the Licensed OPRHP Lands or at the Park.
- (f) HHFT shall not discharge any acids, vapors, or other harmful materials into the water lines, vents, or flues of the Licensed OPRHP Lands. HHFT shall not use the water and wash closets and other plumbing fixtures for any purpose other than those for which the same were designed and constructed, and shall not throw or deposit any sweepings, rubbish, rags, acids, or other foreign substances therein. HHFT shall not store, sweep, or throw anything into the shared common or public areas of the Park, or into or upon any heat or ventilating vents or registers in the Licensed OPRHP Lands, or into any plumbing apparatus in the Licensed OPRHP Lands, or onto any buildings or land adjoining the Licensed OPRHP Lands.
- (g) HHFT shall not use or store, or allow the use or storage, at the Licensed OPRHP Lands of any explosives of any kind, illuminating oils, oil lamps, turpentine, benzene, naphtha, or other similar hazardous materials or substances. HHFT shall properly handle, store, and use all fuel, including propane tanks, Sterno, or other portable warming fuel and apparatus.

#### **Section 4. Branding; Promotional Materials; Advertising**

- (a) HHFT shall not install or place, or permit to be installed or placed, any lights, fixtures, or decorations of any sort (other than building and landscape lighting approved in connection with any Phase or other Capital Project) or any flashing, blinking, neon, or animated signs or lights in windows or areas visible to public view.
- (b) In all advertising, promotional materials, press advisories, or any other similar public communication HHFT shall refer to the Fjord Trail Project as “the Hudson Highlands Fjord Trail” and shall state somewhere in such communication that the Fjord Trail Project is being developed by HHFT in cooperation with OPRHP.
- (c) Standard signage shall include the name “Hudson Highlands Fjord Trail” and the logo adopted from time to time by HHFT, and shall not include the logo of OPRHP, provided that, subject to subsection (e) below, Fjord Trail Project entrance kiosks located on Licensed OPRHP Lands shall include the statement: “This part of the Hudson Highlands Fjord Trail is located within Hudson Highlands State Park Preserve” and the standard OPRHP logo.
- (d) OPRHP reserves the right to preclude HHFT from utilizing a design style, template, or format in any advertisements or promotional materials including, but not limited to, broadcast, print media (including flyers, brochures, pamphlets, and inserts), or website design that is reasonably objectionable to OPRHP.
- (e) In addition to the use contemplated in subsection (b) above, HHFT may, in accordance with the State of New York’s branding guidelines, use OPRHP’s official logo in combination with its own logo in advertising and other promotional materials for the Fjord Trail Project. HHFT shall provide OPRHP

with a copy of all promotional materials on which OPRHP's official logo appears. OPRHP reserves the right to review the use of its official logo in advance. Except for the descriptive use of OPRHP's agency name and any use expressly permitted or required by this agreement, HHFT shall not use any OPRHP or State of New York logo, trademark, service mark, or brand identification or indicia without the written permission of OPRHP. With the exception of "Hudson Highlands Fjord Trail" and its logo, HHFT shall not register any other trademark, service mark, or domain name that would cause confusion in the public as between HHFT and OPRHP. This subsection is not intended to prohibit the use of OPRHP's logo in connection with projects and programs in which OPRHP participates.

- (f) OPRHP may use HHFT's official logo in advertising and promotional materials for the Fjord Trail Project. OPRHP shall provide HHFT with a copy of all promotional materials on which HHFT's official logo appears. HHFT reserves the right to review the use of its logo in advance.

## **Section 5. Sponsorships**

- (a) HHFT shall not sell, lease, license, market, or otherwise offer so-called "naming rights" to the Fjord Trail Project or any part thereof or improvement therein which is located on Licensed OPRHP Lands, without the express written permission of OPRHP. Naming rights includes, without limitation, recognition of contributors and donors of money, property, services, or anything of value to HHFT. OPRHP acknowledges that naming rights may be necessary given the large amounts of private philanthropy necessary for the development of the Fjord Trail Project, and agrees not to object to the granting of such naming rights for the full term of this agreement and the O&M Agreement unless there are substantial reputational concerns arising from the identity of the donor or person being honored.
- (b) Sponsorship funding of the Fjord Trail Project or any part thereof or improvement therein, or of events held therein, together with concession or other agreements with vendors of food, parking, programming, or other complementary revenue-generating activities, are acceptable to OPRHP as a general matter, and OPRHP acknowledges that such sponsorships and concessions might be important sources of funding for both development and operations of the Fjord Trail Project. HHFT may retain sponsorship and concession revenues. Sponsorships and concessions are subject to the prior written approval of OPRHP as to form, content, and manner of presentation, not to be unreasonably withheld. Sponsorship by companies, interests, or organizations that are directly identified with the sale or use of vape, nicotine, or tobacco products is strictly prohibited. Sponsorship opportunities include, without limitation, program inserts, product sampling, and advertising displays at the Fjord Trail Project and at events and projects therein.
- (c) No sponsorship or opportunity or concession agreement shall extend past the Expiration Date, except with respect to naming rights as provided for in subsection (a) of this section.

## **ARTICLE SIX**

### **Section 1. HHFT Insurance Requirements**

- (a) On or before the Commencement Date, HHFT shall procure liability insurance coverage that complies with the policy requirements, coverage types, and liability limit minimums set forth in Attachment E (the "**Required Insurance**"). HHFT shall name "the State of New York; its Office of Parks, Recreation and Historic Preservation; and their officers, employees, and agents" as additional insureds.

- (b) On or before the Commencement Date, HHFT shall provide OPRHP with evidence it holds the Required Insurance in the form of a certificate of insurance or other written confirmation of insurance coverage, including declarations of insurance and endorsements. Such evidence must, at minimum:
  - (i) reference the agreement number;
  - (i) be issued to “New York State Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, New York, 12238”;
  - (ii) be completely filled out with the date of issuance, name(s) of the insured, carrier, carrier’s National Association of Insurance Commissioners number, policy number(s), coverage period, any deductible or self-insured retention amounts, each occurrence and aggregate limits, and exclusions or additional insured endorsements to the policy;
  - (iii) be signed by an authorized representative of the referenced insurance carriers; and
  - (iv) be either an original copy or an electronic version of the same that can be directly traced back to the insurer, agent, or broker via email distribution or similar means.
- (c) During the term of this agreement, HHFT shall maintain in force the Required Insurance. At least 30 days before the expiration of any policy of Required Insurance, HHFT shall provide OPRHP with evidence of the renewal or replacement of such policy; such evidence must meet the requirements of subsection (b) of this section.
- (d) If at any time during the term of this agreement HHFT does not hold the Required Insurance, OPRHP may prohibit HHFT from using and occupying the Licensed OPRHP Lands until HHFT holds the Required Insurance and provides acceptable evidence of insurance.
- (e) HHFT shall notify OPRHP of any potential claims under the policies of Required Insurance as soon as practicable, but in no event more than three days from HHFT’s receipt of notice of the accident or claim.

**Section 2. HHFT Indemnity and Claims**

- (a) HHFT assumes all risks in its performance under this agreement and agrees to defend, indemnify, and hold harmless the State of New York, OPRHP, and their officers, employees, agents, and assigns (“the **Indemnitees**”) from and against all claims, suits, losses, damage, or injury to persons or property of whatsoever kind and nature, whether direct or indirect, that are caused or contributed to by HHFT or HHFT’s contractors, vendors, employees, agents, and invitees other than the general public, and that arise out of HHFT’s conduct or HHFT’s performance of this agreement; provided, however, that HHFT’s indemnity will not extend to any claims, suits, losses, damage, or injury to persons or property directly caused by and but for the negligence of any Indemnitee and that if HHFT maintains the Required Insurance then OPRHP’s recourse on such indemnity will be limited to the proceeds of such insurance.
- (b) For all purposes hereunder, OPRHP will not be liable for any injury, loss, or damage to HHFT or to HHFT’s contractors, vendors, employees, and agents, or to any person happening on, in, or about the Fjord Trail Project or its appurtenances, nor for any injury or damage to the Licensed OPRHP Lands or to any property belonging to HHFT or to any other person, that may be caused by fire, theft, breakage, vandalism, or any other use or misuse or abuse of any portion of the Licensed OPRHP Lands, including but not limited to any common areas, sidewalks, roads, or water in or adjacent to the Licensed OPRHP Lands, or that might arise from any other cause whatsoever, unless and only to the



extent of the proportion of which any such injury, loss or damage is determined to be directly caused by and but for the negligence of OPRHP.

- (c) For all purposes hereunder, OPRHP will not be liable to HHFT or to HHFT's contractors, vendors, employees, agents, and invitees or to any other person for any failure of water supply, gas supply, or electric current, nor for any injury or damage to any property of HHFT or any other person or to the Fjord Trail Project caused by or resulting from spill or release of gasoline, oil, steam, gas, or electricity; leakage of any substance from pipes, appliances, sewers, or plumbing works; hurricane, flood, tornado, wind, or similar storm or disturbance; water, rain, or snow that might leak or flow from the street, sewers, or subsurface areas, or from any part of Fjord Trail Project or any body of water within or adjacent to the Fjord Trail Project; or any public or quasi-public work, unless and only to the extent of the proportion by which any such injury, loss, or damage is determined to be directly caused by and but for the negligence of OPRHP.
- (d) HHFT's responsibility for specific costs under Article Two, Section 4(b) (reimbursement of costs of acquiring Other Interests), Article Three, Section 4(a) (permitting costs), and Article Three, Section 5 (defense of permits and approvals) will be deemed to arise directly from those provisions, not the indemnity provisions of this section, and thus are not subject to any of the limitations or procedural requirements of this section.

## ARTICLE SEVEN

### Section 1. Designated Contacts; Consents by OPRHP

- (a) The parties hereby designate the following individuals as their designated contacts for day-to-day operations under this agreement.

For OPRHP:  
Evan Thompson, Park Manager  
Email: [Evan.Thompson@parks.ny.gov](mailto:Evan.Thompson@parks.ny.gov)  
Telephone:

For HHFT:  
Amy Kacala, Executive Director  
Email: [akacala@scenicHUDSON.org](mailto:akacala@scenicHUDSON.org)  
Telephone: (413) 449-6723

- (b) The parties may designate replacement or updated contacts under subsection (a) of this section by giving 15 days written notice to the other party.
- (c) Any consent by OPRHP permitted or required under this agreement shall be given by OPRHP's Taconic Regional Office unless the provision permitting or requiring such consent expressly provides otherwise. OPRHP shall not unreasonably withhold or delay any consent or approval requested by HHFT.

### Section 2. Notices

- (a) All notices permitted or required under this agreement must be in writing and be transmitted:
  - (i) via certified or registered United States mail, return receipt requested;
  - (ii) by personal delivery;
  - (iii) by expedited delivery service; or
  - (iv) by e-mail.

- (b) Such notices must be addressed as follows or to such different address as the parties may from time-to-time designate:

If to OPRHP:  
OPRHP – Taconic Region  
9 Old Post Road  
Staatsburg, NY 12580  
Attn: Regional Director  
Email: Linda.Cooper@parks.ny.gov

and

NYS OPRHP  
625 Broadway  
Albany, NY 12238  
Attn: General Counsel  
Email: counsel@parks.ny.gov

If to HHFT:  
Hudson Highlands Fjord Trail, Inc.  
c/o Scenic Hudson, Inc.  
One Civic Center Plaza  
Poughkeepsie, New York 12601  
Attn: Amy Kacala, Executive Director  
Email: akacala@scenichudson.org

and

Scenic Hudson, Inc.  
One Civic Center Plaza, Suite 200  
Poughkeepsie, NY 12601  
Attn: Ned Sullivan, President  
Email: nsullivan@scenichudson.org

- (c) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address, or in the case of email, upon receipt.

## ARTICLE EIGHT

### Section 1. Termination Upon Effectiveness of O&M Agreement

When requesting a Supplemental Agreement for the final phase of its development of the Fjord Trail Project, HHFT shall identify such phase as the final phase and request that the parties begin to prepare an O&M Agreement. Such O&M Agreement will restate, consolidate, and replace the operating and maintenance provisions of this agreement as then amended and supplemented on substantially the same terms, will have a term of not less than 20 years, and will thereafter govern all matters pertaining to the operation of the Fjord Trail Project. This agreement (as then amended and supplemented by all Supplemental Agreements) will terminate upon the O&M Agreement becoming effective.

### Section 2. Other Termination

- (a) If HHFT is in breach of this agreement in any of the following ways and such failure continues for more than or is not commenced to be cured within 30 days from HHFT's receipt of notice of default issued by OPRHP, OPRHP may terminate this agreement for cause by notice to HHFT:
- (i) HHFT fails to hold the Required Insurance in accordance with Article 6;
  - (ii) HHFT attempts to assign or sublicense its rights and obligation under this agreement in contravention of Paragraph 2 of Appendix A; and
  - (iii) HHFT fails to undertake any construction on the Fjord Trail Project within three years of the Commencement Date.

- (b) If OPRHP determines that HHFT is not a responsible vendor as required under Article Nine, Section 5, that a conflict of interest exists that could prevent HHFT's satisfactory and ethical performance of its obligations under this agreement, or that HHFT or any of its employees has violated any of the Ethics Requirements, OPRHP may terminate this agreement for cause upon notice to HHFT after providing HHFT notice of the basis for the finding of non-responsibility and 15 days to challenge the finding.
- (c) If any one or more of the following events occurs, OPRHP may, upon the occurrence of such event or at any time thereafter, terminate this agreement by giving HHFT at least 10 days' notice:
- (i) HHFT becomes insolvent; takes the benefits of any present or future insolvency statute; makes a general assignment for the benefit of creditors; files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement, HHFT's reorganization, or the readjustment of HHFT's indebtedness under the federal bankruptcy laws or under any other law of statute of the United States or any State thereof; or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property;
  - (ii) by order or decree of a court, HHFT is adjudged bankrupt or an order is made approving a petition filed by any creditor seeking HHFT's reorganization or the readjustment of HHFT's indebtedness under the federal bankruptcy laws or under any other law of statute of the United States or any State thereof;
  - (iii) a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against HHFT and not dismissed within 45 days after the filing thereof;
  - (iv) the interest or estate of HHFT under this agreement is actually or purportedly let to, transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, or corporation except upon the express written approval of OPRHP;
  - (v) a receiver, trustee, or liquidator takes possession or control of all or substantially all of the property of HHFT by, pursuant to, or under authority of any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer;
  - (vi) any execution or attachment is issued against HHFT or any of its property whereupon possession of the Fjord Trail Project or any portion thereof is taken by someone other than HHFT and such possession or control continues for a period of 20 days;
  - (vii) any lien is filled against the OPRHP Lands because of any act of omission of HHFT and not removed or bonded as provided for in this agreement;
  - (viii) HHFT ceases to be duly authorized to conduct business in the State of New York.
- (d) OPRHP may also terminate this agreement without advance notice to HHFT if any member, partner, director, or officer of the HHFT is convicted of any of the following offenses: Bribery Involving Public Servants and Related Offenses, as defined in Article 200 of the New York State Penal Law; Corrupting the Government, as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.
- (e) No waiver by OPRHP of any default on the part of HHFT in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by HHFT is or will be construed to be a waiver by OPRHP of any other or subsequent default in performance of any of the said terms, covenants, and conditions.

- (f) HHFT hereby waives its right to trial by jury in any summary proceeding, ejectment, or other action that may hereafter be instituted by OPRHP against HHFT in respect of the Fjord Trail Project or in any action that may be brought by OPRHP to recover fees, damages, or other amounts payable under this agreement. HHFT shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment that may be brought by OPRHP unless such claims would be deemed waived if not so interposed.
- (g) The rights of termination described in this section are in addition to any other rights of termination provided in this agreement and any rights and remedies the parties would have at law consequent upon any breach of this agreement. The exercise by OPRHP of any right of termination will be without prejudice to any other such rights and remedies.
- (h) HHFT hereby waives all rights of redemption arising if it is evicted or dispossessed for any cause set forth in this agreement or if OPRHP obtains or retains possession of the Licensed OPRHP Lands in any lawful manner.

**Section 3. Surrender**

- (a) If this agreement is terminated under Section 1 of this article or otherwise comes to an end without the parties entering into a subsequent agreement for the Fjord Trail Project, HHFT shall yield and deliver peaceably to OPRHP possession of the Licensed OPRHP Lands on the date of expiration or termination of this agreement. HHFT shall return the Licensed OPRHP Lands to OPRHP in condition suitable for continued use as a public recreational amenity or in compliance with an alternative agreement reached by the parties at the time of surrender.
  - (i) On or before the date of surrender under this section, HHFT shall, unless otherwise agreed between HHFT and OPRHP:
    - (a) remove its equipment, removeable fixtures, and other personal property and all property of third parties for which it is responsible from the Licensed OPRHP Lands;
    - (b) remove any advertising, identifiers, or other of its signs from the Licensed OPRHP Lands; and
    - (c) repair all damage caused by such removals.

OPRHP may lawfully remove or dispose of any personal property remaining on the Licensed OPRHP Lands after the expiration or termination of this agreement.
- (b) No agreement of or to accept a surrender will be valid unless and until the same is reduced to writing and signed by the duly authorized representatives of the parties. Except as expressly provided in this section, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of OPRHP will be deemed an acceptable of a surrender of the Licensed OPRHP Lands or this agreement.

**Section 4. Right of Re-Entry**

- (a) OPRHP may, as an additional remedy upon the termination of this agreement, re-enter the Licensed OPRHP Lands and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or

any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of HHFT under this agreement, and shall in no event constitute an acceptance of surrender.

## ARTICLE NINE

### Section 1. Books and Records

- (a) HHFT shall keep books and records of account for the Fjord Trail Project (“**Financial Records**”) in an electronic format and in accordance with generally accepted accounting principles. HHFT shall keep its Financial Records for the balance of the calendar year in which they were made and for six additional years thereafter.
  - (i) During the term of this agreement and for six years thereafter OPRHP, the Office of the State Comptroller, the Office of the Attorney General, and their authorized representatives and contractors (collectively, “**State Auditors**”) may inspect and audit HHFT’s Financial Records during at any time during normal business hours upon at least 24 hours’ notice. As part of such an inspection or audit, the inspector or auditor may make copies of HHFT’s Financial Records.
- (b) During the term of this agreement and for one year thereafter, HHFT shall on or before April 15<sup>th</sup> of each year provide OPRHP with a certified financial statement covering the Fjord Trail Project for the preceding calendar year.

### Section 2. Liens

- (a) HHFT shall not create or cause to be created any lien, encumbrance, or charge upon the Licensed OPRHP Lands, the Park, or any part thereof.
- (b) If any mechanics, laborers, or similar statutory or common law lien (including tax liens, provided that the underlying tax is an obligation of HHFT by law or by a provision of this agreement) caused or created by HHFT is filed against the Licensed OPRHP Lands, or if any public improvement lien created or caused to be created by HHFT is filed against any assets of or funds appropriated by OPRHP, then HHFT shall within 45 days after receipt of notice of the lien cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise.
- (c) HHFT will not, however, be required to discharge any such lien if HHFT has: (i) furnished OPRHP with, at HHFT’s option, a cash deposit, bond, letter of credit (from an institutional lender in a form satisfactory to OPRHP), or other security reasonably satisfactory to OPRHP in an amount sufficient to discharge the lien and all applicable interest, penalties, and/or costs; and (ii) brought an appropriate legal proceeding to discharge the lien and is prosecuting such proceeding with diligence and continuity; except that if despite HHFT’s efforts to discharge the lien OPRHP reasonably believes the lien is about to be foreclosed and so notifies HHFT, HHFT shall immediately cause such lien to be discharged of record or OPRHP may use the security furnished by HHFT in order to discharge the lien.

### Section 3. Force Majeure

- (a) If either OPRHP or HHFT is delayed or prevented from performing any act required by this agreement by reason of acts of God, weather, earth movement, lockout or labor trouble, pandemic or epidemic,

or acts of war, riot, or other similar causes without fault and beyond the reasonable control of the party obligated, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Nothing in this section however, excuses HHFT from the prompt payment of any fees and amounts due to OPRHP.

- (b) HHFT waives any and all claims for compensation from the State of New York and OPRHP for any and all loss or damage sustained by HHFT resulting from weather, fire, water, tornado, civil commotion, riots, earth movement, pandemic or epidemic or other similar or dissimilar causes beyond the control of OPRHP.

#### **Section 4. Freedom of Information Law**

HHFT acknowledges that OPRHP is subject to the requirements of the Freedom of Information Law and that any information or records submitted by HHFT to OPRHP are presumptively subject to disclosure unless specifically exempted by statute. In accordance with Public Officers Law Section 89(5)(a)(3), OPRHP will maintain any information or records that HHFT requests be exempted from disclosure pursuant to Public Officers Law 87(2)(d) apart from all other information or records and, in the event of a request under the Freedom of Information Law for such information or records, shall contact HHFT to determine the extent to which such information or records might properly be exempted from disclosure.

#### **Section 5. Responsibility Determination by OPRHP**

- (a) HHFT acknowledges that OPRHP's execution of this agreement is contingent upon OPRHP's determination that HHFT is responsible. OPRHP relies in part upon the HHFT's responses to the Vendor Responsibility Questionnaire developed by the Office of the State Comptroller to make its responsibility determination but may make its determination based on any information available to it.
- (b) HHFT shall remain responsible throughout the term of this agreement. Upon request by OPRHP, HHFT shall present evidence of its continuing legal authority to do business in New York State and its business integrity, legal authority, experience, ability, prior performance, and organizational and financial capacity.
- (c) If OPRHP discovers information that calls into question HHFT's responsibility, OPRHP may suspend any or all activities under this agreement by written notice to HHFT outlining the basis of the suspension and listing activities to be suspended. Upon the issuance of such suspension notice, HHFT shall not engage in or undertake the listed activities unless and until OPRHP issues a written notice ending the suspension and HHFT shall comply with all reasonable requests from OPRHP to cure the basis for suspension.

#### **Section 6. Conflicts of Interest; Former State Employees**

- (a) HHFT states there is no actual or potential conflict of interest that could prevent HHFT's satisfactory and ethical performance of its obligations under this agreement. HHFT shall notify immediately OPRHP of any actual or potential conflict of interest that arises after the signing of this agreement.
- (b) HHFT shall not hire former OPRHP employees in violation of the New York Public Officers Law, other laws applicable to the service of State employees, or the rules, regulations, opinions, guidelines,

or policies of the New York State Joint Commission on Public Ethics or its predecessors (the “**Ethics Requirements**”). HHFT shall not assign any of its employees in violation of the Ethics Requirements or allow any of its employees to provide services in violation of the Ethics Requirements. HHFT shall identify to OPRHP all of its employees who are current or former employees of OPRHP; OPRHP may require HHFT to provide reasonably necessary information to determine whether any such employee’s work is consistent with or violates the Ethics Requirements and may require HHFT to seek the opinion of the New York State Joint Commission on Public Ethics or its successor.

**Section 7. Rights of Third Parties**

Nothing contained in this agreement creates or gives to third parties any claim or right of action against the Indemnitees, or any interest in real or personal property of the State of New York, beyond that as may legally exist without regard to this agreement.

**Section 8. Claims**

- (a) All claims against OPRHP arising out of this agreement are limited to money damages and will be commenced exclusively in, and subject to the jurisdiction of, the New York State Court of Claims.
- (b) All claims against HHFT for damages brought by OPRHP and/or any actions to enforce the terms and conditions of this agreement shall be enforceable in any appropriate court in Albany County, New York, which shall be the exclusive venue.

**Section 9. Agency**

Nothing contained in this agreement constitutes or will be construed to create or constitute a legal or *de facto* partnership or joint venture or an agency relationship between the parties.



**Section 10. Integration Clause**

Except for the contemplated Supplemental Agreements, this agreement shall not be materially amended or otherwise modified except in writing signed by both parties and approved by the Office of the State Comptroller. Except to the extent that documents are incorporated herein by reference or referred to herein as affecting the subject matter hereof, this agreement, including the Supplemental Agreements thereto, constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith. No covenant, condition, or representation not expressed herein or in any Supplemental Agreement shall be effective to interpret, change, or restrict the express provisions of this agreement. This agreement shall be interpreted without construing any provision in favor of or against either party by reason of the drafting of the provision.

**\*Signature Page Follows\***

In witness whereof, the parties are signing this agreement on the date stated in the introductory clause.

**Hudson Highlands Fjord Trail, Inc.**

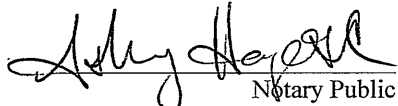
By:   
Name: Amy Kacala  
Title: Executive Director  
Federal EIN: 

*Acknowledgement*


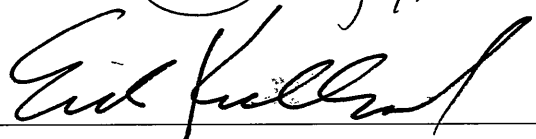
STATE OF New York )  
 ) SS:  
COUNTY OF Dutchess )

On this 17 day of March in the year 2021 before me, the undersigned a notary public in and for said state, personally appeared Amy Kacala, personally known, to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is described within the instrument and acknowledged to me that he/she executed the same in his/her capacity as the Executive Director of Hudson Highlands Fjord Trail, Inc. and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Ashley P. Hajosch  
Notary Public, State of New York  
Reg. No. 01HA6343360  
Qualified in Dutchess County  
Commission Expires June 6, 2024

  
Notary Public

**State of New York, Office of Parks, Recreation and Historic Preservation**

Recommendation of Regional Director:   
By: 

**Office of the Attorney General**

**Office of the State Comptroller**

*electronic approval follows*

**\*Attachments Follow\***



In witness whereof, the parties are signing this agreement on the date stated in the introductory clause.

Hudson Highlands Fjord Trail, Inc.

By:

Name:

Amy Kacala

Title:

Executive Director

Federal EIN:



Acknowledgement

STATE OF New York )  
 ) SS:  
COUNTY OF Dutchess )

On this 17 day of March in the year 2021 before me, the undersigned a notary public in and for said state, personally appeared Amy Kacala, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is described within the instrument and acknowledged to me that he/she executed the same in his/her capacity as the Executive Director of Hudson Highlands Fjord Trail, Inc. and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

Ashley P. Hajosch  
Notary Public, State of New York  
Reg. No. 01HAG343360  
Qualified in Dutchess County  
Commission Expires June 6, 2024

  
Notary Public

State of New York, Office of Parks, Recreation and Historic Preservation

Recommendation of Regional Director:

By:

Office of the Attorney General

electronic approval follows

Office of the State Comptroller

APPROVED  
DEPT. OF AUDIT & CONTROL  
  
Jul 02 2021  
James M. Iwaneczko  
  
FOR THE STATE COMPTROLLER

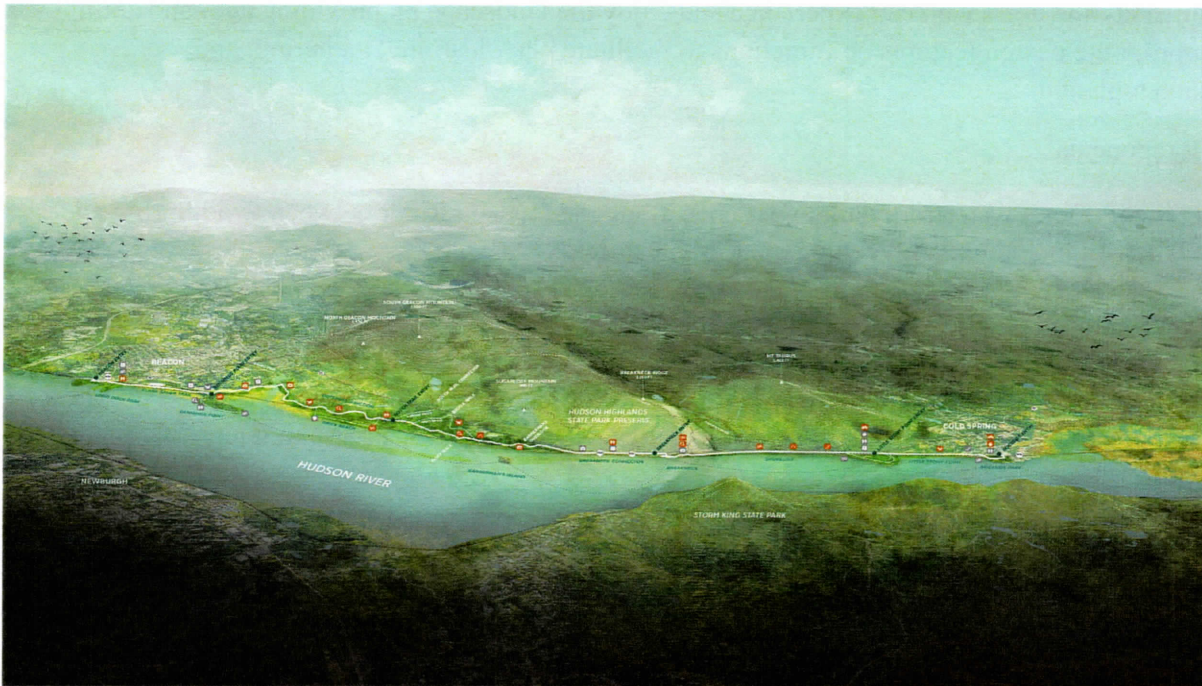
\*Attachments Follow\*

## Attachment A

### FJORD TRAIL PROJECT DESCRIPTION

#### Project Location

The project site comprises approximately 7.5 miles along or near the Hudson River shore between Cold Spring and Beacon, NY. Not just linear, the project would improve and operate lands currently held by OPRHP, predominantly within the Hudson Highlands State Park Preserve, as well as Metro-North, DEP, and several in private ownership. For more information on specific parcels, see Attachment B.



#### Project Purpose and Need

The project is designed to address two interrelated needs:

1. Providing safe, well-organized visitor management to the outdoor recreation destinations along the Route 9D corridor between Cold Spring and Beacon – most notably Breakneck Ridge; and
2. Facilitating access, appreciation, and enjoyment of the landscape – both physically and through curated experiences highlighting the rich history and ecology of the area.

Conditions in the site that demonstrated need for this intervention included:

- High and growing visitation to the Hudson Highlands trailheads, especially Breakneck Ridge now estimated to receive 250,000 visitors each year.
- Limited or absent pedestrian infrastructure in the corridor creating an urgent pedestrian safety risk.
- Negative externalities of visitation within nearby communities and within the park preserve – notably parking, garbage, trail spreading/trespassing, and a lack of restrooms – creating noxious conditions that exceed the capacity of the municipalities or state agencies to address.

- A train station with no site controls or security measures in place to keep people off the tracks, which recently resulted in a death.

These factors of need were then crafted into a Master Plan to implement the necessary intervention in a way that accents rather than detracts from the spectacular landscape. This included treating the project as an opportunity to achieve other important goals in addition to safely managing visitation:

- Restore access to the river where it had long been severed by rail and highway infrastructure,
- Heal or build resilience into a landscape long modified by industry and now facing impacts from climate change, and
- Diversity the users who can experience and enjoy the landscape by providing age- and ability-appropriate design features or attractions to facilitate play, learning, gathering, and contemplation.

### Project Components

The project will offer a waterfront park experience along the Hudson River between Cold Spring and Beacon. This will include several components and features:

- **Main Trail:** A 7.5-mile ADA shared use path varying in width from 10 feet to 14 as site conditions allow.
- **Meanders:** An additional 7 miles of smaller paths to immerse visitors in the landscape. These are sometimes ADA and sometimes not and are located to provide access to interesting natural features or landscape views.
- **Family-Friendly Destinations:** Four family-friendly zones to take a playful twist on the ecology including a driftwood play beach and outdoor classroom, a scramble play area, forest nets in the forest canopy, and a marsh exploration boardwalk.
- **Amenities:** Throughout the park, various site amenities will be provided to help manage the visitor experience. This includes a visitor center, steward station at Breakneck, bathroom facilities, garbage, wayfinding, bike racks, parking, and a trolley during peak season.

### Operations and Maintenance

Hudson Highlands Fjord Trail, Inc. will operate, maintain, and offer or coordinate programming in the park, pursuant to a Cooperative Agreement with OPRHP.

Attachment B

**REAL PROPERTY OVERVIEW**

At full buildout, the project will occupy lands held by a number of owners. While the Main Trail would simply traverse most parcels, lands of OPRHP (green) or lands held in fee by HHFT would be subject to more programming and park improvement (meanders, destinations, parking, etc.). Properties shaded in gray indicate transactions completed as of 12/2020.

Summary of Properties Needed for the Project

Property	Ownership	Acquisition Type	Lead
<b>River Zone</b>			
Bergman	Private	Trail Easement	OPRHP
Dockside Park	OPRHP		
Railroad causeway and shoreline to Breakneck	MNR	Long term lease (in kind?)	HHFT
Little Stony Point	OPRHP		
<b>Highlands Zone</b>			
Drainage Chamber	DEP	Easement	OPRHP
Breakneck Connector	MNR	Long term lease (in kind)	HHFT
Breakneck Bridge Air Rights	MNR	Permanent easement	OPRHP
Upper Overlook and Breakneck Ridge Trailhead	MNR to OPRHP	Fee Simple (gift) with easement/accommodation made for subsurface RR needs (tunnel)	OPRHP
Upper Overlook and Breakneck Ridge Trailhead	OPRHP		
<b>Forest Zone</b>			
Matthews	Private	Trail easement	SHLT-HHFT
Fawkes/Parsia	Private	Trail easement	SHLT-HHFT
Kotzias	Private	Trail easement	SHLT-HHFT
Whitson	Private	Trail easement	HHFT
Coris (Harry)	Private	Trail easement	HHFT
Coris (Dean)	HHFT		
Coris - Dutchess Manor	HHFT		
Kotzias	Private	Trail easement	SHLT-HHFT
Cole	Private	Trail easement	SHLT-HHFT
Hanselmann	Private	Trail easement	SHLT-HHFT
Stotz	Private	Trail easement	SHLT-HHFT
Air Rights @ brick beach meander	MNR	Air rights for bridge(s)	HHFT
<b>Marsh Zone</b>			
Fina	Private	Trail easement	SHLT-HHFT
Weber	Private	Trail Easement	SHLT-HHFT
Beacon/Maybrook Line	MNR	Trail easement	HHFT
Madam Brett and Klara Sauer	City of Beacon, Scenic Hudson	Trail Operations/Use Agreement	HHFT
Dennings Point	OPRHP		

Attachment C

**REQUIREMENTS FOR CAPITAL CONSTRUCTION PROJECTS**

- (a) All capital improvement investment projects to be undertaken by Licensee shall be approved in advance by OPRHP in accordance with the License. Upon approval of a capital improvement project by OPRHP, the Licensee shall fully implement the approved project and all its individual elements at the direction of OPRHP pursuant to the requirements contained herein. The Licensee shall be solely responsible for the full cost of implementing all approved projects, including all costs and expenses of construction that exceed the Licensee's minimum capital investment required by the License.
- (b) Designs for all projects proposed by Licensee shall be in compliance with the NYS Uniform Fire Prevention and Building Code (Building Code). Designs shall be developed and signed by a professional engineer or architect licensed to practice in New York State. All designs for capital improvements shall be subject to the written review and approval of OPRHP with respect to aesthetics and compliance with the Building Code, the State Historic Preservation Act, and the State Environmental Quality Review Act, prior to any bidding or award of contracts for such construction, or commencement of construction.
- (c) All contracts for construction or improvement of the Licensed Premises shall provide for the payment of prevailing wage rates set by the New York State Department of Labor. The Licensee is solely responsible to ensure the payment of prevailing wage rates on all capital improvement projects. Upon request by the Licensee, OPRHP shall provide prevailing wage rate sheets to the Licensee.
- (d) Copies of all contracts, subcontracts, change orders, progress payment documents and related material shall be provided to OPRHP within five business days upon request by OPRHP.
- (e) Throughout the construction phase of the project, the Licensee shall conduct regular "job meetings" to assess progress on the project, and produce written records of such meetings, with a copy to OPRHP. At the discretion of OPRHP, a representative may attend the job meetings at no cost to the Licensee.
- (f) A schedule of construction activity shall be recommended by Licensee and approved by OPRHP. Licensee shall not unreasonably interfere with normal park operations. Licensee shall avoid construction on those days when large park attendance can be reasonably anticipated, including major holidays such as Memorial Day, Independence Day (4th of July) and Labor Day.
- (g) All construction and material costs and expenses in excess of original estimates for the approved project shall be the sole responsibility of the Licensee, and OPRHP shall have no liability whatsoever for any additional expenses either to the Licensee or the Licensee's contractors, subcontractors, and/or suppliers. The Licensee assumes any and all additional and extra costs, including but not limited to costs and expenses associated with the upgrade of utilities, security and fire control systems, code compliance, delay for whatever cause, weather, and unknown or unforeseen conditions associated with the Licensed Premises. OPRHP shall have no obligation in law or in fact to expend funds or undertake any capital improvements as a result or consequence of any project undertaken, or condition encountered by the Licensee.
- (h) Additional Insurance Required for Capital Improvements. In addition to the insurance required by the License, the Licensee shall require its contractors to carry Contractor's Liability Insurance which names OPRHP and the Licensee as additional insured. Licensee shall provide to OPRHP a copy of all insurance certificates evidencing coverage in compliance with this section. Such insurance shall include the following coverage:

1. Liability (including contractual liability) and Protective Liability to protect the Licensee and OPRHP from any suits, actions, damages and costs of every name and description, with respect to all work performed by the Licensee's contractors and subcontractors; and
2. Owner's Protective Liability to protect OPRHP with respect to all operations undertaken by the Licensee's contractors and subcontractors, including omissions and supervisory acts; and
3. Completed Operations/Products Liability covering liability and damages arising between the date of final cessation of construction work and the date of final acceptance of the construction by OPRHP; and
4. Builder's Risk Insurance:
  - i. Unless otherwise provided for in the License the Licensee's contractor shall maintain builder's risk insurance for the completed value of the Licensed Premises on the All Risk Form.

(i) Labor and Materials Bond.

1. Prior to the commencement of any construction work hereunder, Licensee shall furnish OPRHP with evidence that it has procured a labor and materials payment bond from a corporate surety authorized to transact business in the State of New York, in a form satisfactory to OPRHP, naming Licensee as principal, in an amount not less than one hundred (100%) percent of the total cost of the construction work to be undertaken by Licensee as approved by OPRHP. Such bond shall guarantee payment for all materials, provisions, supplies, and equipment used in, upon, for, or about the performance of said construction work, and/or labor performed thereon of any kind whatsoever, and which unconditionally protects OPRHP from any claims, liability, losses, or damages arising therefrom.
2. As evidenced by certification by the engineer or architect of record for the project, OPRHP shall authorize the reduction of the face value of the labor and materials bond on a monthly or other periodic basis to an amount equal to the remaining contract costs, including approved change orders.

(j) It is expressly understood that failure of the Licensee to comply with the requirements for capital improvement projects, including maintaining the required insurance and bonds in full force throughout the performance of the approved project, shall be deemed a material breach of the License and may, at the election of OPRHP, result in termination of the License without further notice. The Licensee shall notify OPRHP immediately of any change in insurance or bonding status including, but not limited to, any change in carrier or surety.

If there are any discrepancies between this Attachment and the License, the language of the License shall prevail.

Attachment D

**INSURANCE REQUIREMENTS**

- (a) The following types of liability insurance coverage with liability limits of at least the levels set forth below are required.
- (i) **Commercial General Liability Insurance** covering claims arising out of ongoing and completed operations under this agreement as well as damage to or loss at the Premises caused by fire and water damage. Such policy must have a liability limit of at least \$2,000,000 each occurrence and at least \$5,000,000 general aggregate..
  - (ii) **Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance of this agreement including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Law of the State of New York to bear license plates. Such policy must have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000 each accident.
- This coverage is not required if no automobiles or motor vehicles are used in connection with the performance of this agreement.
- (b) The required insurance coverage limits may be met through a combination of primary and excess/umbrella liability policies, however, any excess/umbrella policies must be written on a "following form" basis.
- (c) All insured required by this section must:
- (i) be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of "A-", Class "VII" or better;
  - (i) provide that the required coverage shall be primary and non-contributory to other insurance available to the State of New York; and
  - (ii) be written such that OPRHP is afforded at least 30 days' prior notice of cancellation or modification of coverage.

Attachment E

**FORM OF SUPPLEMENTAL AGREEMENT**

**PHASE \_\_\_ SUPPLEMENTAL AGREEMENT**

**TO**

**COOPERATIVE AGREEMENT**

**HUDSON HIGHLANDS FJORD TRAIL**

This agreement, dated \_\_\_\_\_, between the New York State Office of Parks, Recreation and Historic Preservation (“**OPRHP**”), and Hudson Highlands Fjord Trail, Inc. (“**HHFT**”) a New York not-for-profit corporation, amends and supplements the Cooperative Agreement dated \_\_\_\_\_, between the same parties, as it may have been previously amended or supplemented (“**COOPERATIVE AGREEMENT**”).

All defined terms not otherwise defined herein are used with their meanings set forth in the Cooperative Agreement.

**RECITALS:**

The Cooperative Agreement requires that, prior to commencing construction on each Phase of the Fjord Trail Project, the parties enter into a Supplemental Agreement with respect to that Phase that specifically identifies and defines such Phase, constitutes the capital project approval for such construction, and sets forth any and all terms and conditions, in addition to the terms and conditions set forth in the Cooperative Agreement, that shall govern the development and initial operation of such Phase (including, without limitation, any additional operating conditions applicable to such Phase required by OPRHP and provisions designed to satisfy the requirements of government units or public agencies who own real property interests relevant to such Phase).

Now, **therefore**, the parties agree as follows:

**1. This Supplemental Agreement**

(a) This agreement is comprised of the following documents:

- (iii) Supplemental Agreement
- (iv) Attachment A – Phase \_\_\_ Overview
- (v) Attachment B – Identification of Phase \_\_\_ Real Property, Including Premises Map



- (d) In the event of any inconsistency in or conflict between this agreement and the Cooperative Agreement, as it has been amended or previously supplemented, such inconsistency or conflict shall be resolved by giving precedence to this agreement, including its attachments.

**2. Phase \_\_\_ Designation**

HHFT has designated the capital projects described in Attachment A, located in whole or in part on Licensed OPRHP property as shown in Attachment B, as "Phase \_\_\_."

**3. Materials Previously Provided to OPRHP In Connection with Phase \_\_\_**

HHFT represents that it has previously delivered to OPRHP, and OPRHP acknowledges delivery of:

- a. Stamped construction plans  
*Identify here:* \_\_\_\_\_
- b. Copies of required permits from other state agencies or federal agencies:  
*Identify here:* \_\_\_\_\_
- c. Copies of required approvals and documentation for compliance with SEQRA, the State Historic Preservation Act, NEPA and the National Historic Preservation Act:  
*Identify here:* \_\_\_\_\_

**4. Additional Conditions to Commencement of Construction**

Commencement of construction by HHFT and its contractors is conditional on the prior satisfaction by HHFT of the following additional conditions, unless explicitly waived in writing by OPRHP:

*[include any permits or approvals not received or required at this time when Supplemental Agreement executed and/or resolution of any third-party litigation or challenge]*

**5. Phase \_\_\_ Real Property Interests**

(a) Scope of Phase \_\_\_.

Attachment A sets forth for Phase \_\_\_\_\_ all fee lands, leasehold interests, easements or rights of way, or other known or recorded real property interest of any type whatsoever, to be utilized by or in connection with Phase \_\_\_.

(b) OPRHP Lands.

The following OPRHP Lands, if any, not previously designated as Licensed OPRHP Lands, are hereby designated as Licensed OPRHP Lands:

*List:*

(c) HHFT Lands.

The following HHFT Lands (or portions thereof or interests therein) are hereby designated as Licensed HHFT Lands:

*List, excluding any fee, easement or leasehold interests, or portions thereof, that are not being used for purposes of the Fjord Trail Project and thus are not deemed to be Licensed HHFT Lands:*

(d) Other Interests.

The following lists Other Interests to be utilized by or in connection with Phase \_\_\_\_, the party holding each such Other Interest, the means by which the holder of the Other Interest has made it available for purpose of the Fjord Trail Project, and, if not made available directly to HHFT, the means by which HHFT has obtained its right to use:

Party holding Other Interest	Other Interest Held by such Party to be Used in connection with Phase ____	Document Granting Access or Use for Fjord Trail Purposes (and parties to such document)	Means by Which HHFT Obtains Right to Use, If not Directly
Other NY State office, department, agency, or other governmental unit or public agency: [identify]			
Other NY State office, department, agency, or other governmental unit or public agency: [identify]			
Other NY State office, department, agency, or other governmental unit or public agency: [identify]			

(e) HHFT Obligations in Connection with Other Interests.

*If all of HHFT obligations in connection with the Other Interest are **not** set forth in a document to which HHFT is a party, or in a separate document pursuant to which OPRHP's rights are made available to HHFT (such as a sublease), then insert here the operative obligations of HHFT to perform all conditions, terms, requirements, etc. in the same manner as if such right to use the Other Interest had been granted to HHFT directly:*

**6. Capital Project Approval and Additional Phase \_\_\_\_ Construction Requirements**

OPRHP grants Capital Projects Approval, on the terms and subject to the conditions and requirements in the Cooperative Agreement, together with the additional terms, conditions and requirements set forth herein (if any), for the work contemplated by the stamped construction drawings referred to in Section 3.

In addition to all of the construction phase requirements set forth in Article Four of the Cooperative Agreement, the following additional requirements shall apply to Phase \_\_\_\_:

[state "none" or list additional requirements]

**7. Additional Phase \_\_\_\_ Operating Conditions and Requirements**

In addition to all of the operating terms, conditions and requirements set forth in Article Five of the Cooperative Agreement, the following additional requirements shall apply to Phase \_\_\_\_:

*[state "none" or list additional requirements]*

**8. Miscellaneous**

For the avoidance of doubt, as an agreement supplementing and amending the Cooperative Agreement, all of the provisions of Articles Seven, Eight and Nine of the Cooperative Agreement (in addition to the Standard Clauses for New York State Contracts set forth in Appendix 1), shall apply to this Supplemental Agreement as well as to the Cooperative Agreement as amended and supplemented hereby).

**In witness whereof**, the parties are signing this agreement on the date stated in the introductory clause.

**Hudson Highlands Fjord Trail, Inc.**

By: \_\_\_\_\_

Name:

Title:

Federal EIN:

**State of New York, Office of Parks, Recreation and Historic Preservation**

Recommendation of Regional Director: \_\_\_\_\_

By: \_\_\_\_\_

**\*Attachments Follow\***

**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall

be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that

the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State

Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312

of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract;

or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: mwbecertification@esd.ny.gov  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this

bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. **RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. **COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. **COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor



shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. **PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. **CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the

determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. **ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.